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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,707	07/01/2003	Victor J.J. Cautereels	131025-D200	4453
20094	7590	06/19/2007	EXAMINER	
DART INDUSTRIES INC			SMALLEY, JAMES N	
P O BOX 779001			ART UNIT	PAPER NUMBER
ORLANDO, FL 328779001			3781	
			MAIL DATE	DELIVERY MODE
			06/19/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/611,707

Applicant(s)

CAUTEREELS ET AL.

Examiner

James N. Smalley

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 26 March 2007 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 11 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Nichols et al. US 6,145,687.

Nichols '687 teaches a container comprising a base tray (12), an upwardly extending dome-shaped cover (14) having a vent opening (18) and a vent panel (34) mountable to the cover for controlling atmospheric conditions, wherein the vent panel is perforated by multiple holes (unlabeled; best seen in figure 5c), a foil (32) of predetermined vapor permeability, and cooperating means on the panel edge portion and the rip for locking the panel to the cover and overlying and closing the opening.

The device itself, although explicitly drawn to sterilization of medical instruments, is capable of being used in the intended manner for serving cheese, as claimed, because it meets all structural and functional limitations of the rejected claims. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

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The filter (32) is read to be a foil because it comprises a thin layer of material. Furthermore, because it is configured to allow air to pass through while "inhibiting or preventing the passage of dirt, dust, bacteria, and other contaminants into the interior of the container" (column 3, lines 26-28), the foil is thus read to control atmospheric conditions in the chamber relative to ambient.

4. Claims 1 and 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Bergeret et al. FR 2,790,245.

Examiner notes a English machine-translation of the Specification of this patent is enclosed herein, and was provided by the Altavista Babelfish online translator at <http://babelfish.altavista.com/>. A digital version of the Specification was obtained online from the EPO at http://ep.espacenet.com/?locale=EN_ep.

Bergeret '245 teaches a cheese storage container comprising a base tray (1), a dome-shaped cover (2), and a vent panel (6) for controlling atmospheric conditions in the chamber relative to ambient conditions, wherein the vent panel is perforated with multiple holes (Examiner notes there appear to be holes defined by the "openwork wall" 8 as shown in figure 1) over substantially the full extent to define a venting area (4), a foil (5) of predetermined vapor permeability overlying the venting area, and cooperating means (6c, 130) on the panel edge portion for releasably locking it to the base, and whereby the tray comprises a planar top surface with a depending peripheral flange (1), and an outwardly projecting ledge (3), and the cover having a lower edge portion (2a) surrounding and enclosing the tray and seating on the ledge. Regarding claims 6 and 10, the cover is downwardly offset at (unlabeled; located about (130) in figure 2) to define a peripheral seat (13a) for receiving the peripheral edge of the vent panel. Regarding claim 11, vent panel (4) is flush with the top surface of the cover as seen in figure

1.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 4 and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bergeret et al. FR 2,790,245 in view of Amberg et al. US 3,083,861.

Bergeret '245 fails to teach the foil (5) being waterproof. Instead the reference teaches an odor absorbing filter layer (7) of charcoal which comprises a desiccants as known in the art.

Amberg '861 teaches a cover for food containers, disclosing a cellulose foil (20) which permits passage of gas but prevents passage of liquid in order to maintain ambient conditions inside the container.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the barrier layers of Bergeret '245, providing the foil layer of Amberg '861, motivated by the benefit of providing liquid retention and gas permeation in one single layer instead of the two taught therein.

7. Claims 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bergeret et al. FR 2,790,245 in view of Amberg et al. US 3,083,861 as applied above to claim 4 and further in view of Tecco et al. US 4,000,839.

Bergeret '245, as modified, fails to teach a depending locking ring having an undercut thereon for receiving a portion of the rim in a snap lock.

Tecco '839 teaches a cover within the boundary of a primary cover of a container, having a depending locking ring (31) with an undercut, in order to snap lock to the rim (24) of a container opening. Examiner asserts one of ordinary skill in the art recognizes the interchangeability of connection means between a cover and a base component.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cover of Bergeret '245, providing a depending ring with an undercut for snap fitting to the rim of the cover vent opening, as taught to be known by Tecco '839, motivated by the benefit of providing a secure releasable connection.

8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bergeret et al. FR 2,790,245 in view of Amberg et al. US 3,083,861 and in view of Tecco et al. US 4,000,839 as applied above to claim 6, and further in view of Hagen et al. US 6,237,765.

Bergeret '245 fails to teach a minor portion of the cover rim being inwardly offset in order to define a finger recess.

Hagen '765 teaches providing a depression in a cover top surface in order to define a finger recess so that a user can grip an edge of a hinged cover in order to open it.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the cover of Bergeret '245 with a finger recess, as taught to be known by Hagen '765, motivated by the benefit of providing means for a user to remove the vent panel for cleaning or to replace the foil barrier layer.

9. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bergeret et al. FR 2,790,245 in view of Hagen et al. US 6,237,765.

Bergeret '245 fails to teach a minor portion of the cover rim being inwardly offset in order to define a finger recess.

Hagen '765 teaches providing a depression in a cover top surface in order to define a finger recess so that a user can grip an edge of a hinged cover in order to open it.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the cover of Bergeret '245 with a finger recess, as taught to be known by Hagen '765, motivated by the benefit of providing means for a user to remove the vent panel for cleaning or to replace the foil barrier layer.

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10. Claim 9-11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bergeret et al. FR 2,790,245 in view of Tecco et al. US 4,000,839.

Bergeret '245, as modified, fails to teach a depending locking ring having an undercut thereon for receiving a portion of the rim in a snap lock.

Tecco '839 teaches a cover within the boundary of a primary cover of a container, having a depending locking ring (31) with an undercut, in order to snap lock to the rim (24) of a container opening. Examiner asserts one of ordinary skill in the art recognizes the interchangeability of connection means between a cover and a base component.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cover of Bergeret '245, providing a depending ring with an undercut for snap fitting to the rim of the cover vent opening, as taught to be known by Tecco '839, motivated by the benefit of providing a secure releasable connection.

11. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bergeret et al. FR 2,790,245 in view of Tecco et al. US 4,000,839 as applied above to claim 11 and further in view of Hagen et al. US 6,237,765.

Bergeret '245 fails to teach a minor portion of the cover rim being inwardly offset in order to define a finger recess.

Hagen '765 teaches providing a depression in a cover top surface in order to define a finger recess so that a user can grip an edge of a hinged cover in order to open it.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the cover of Bergeret '245 with a finger recess, as taught to be known by Hagen '765, motivated by the benefit of providing means for a user to remove the vent panel for cleaning or to replace the foil barrier layer.

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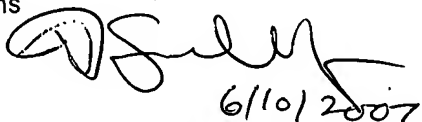
Conclusion

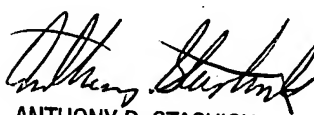
Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N. Smalley whose telephone number is (571) 272-4547. The examiner can normally be reached on Monday - Friday 10 am - 7 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jns


6/10/2007


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